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Supreme Court of the United States

OCTOBER TERM, 1947.

No. 661.

A. PHILLIP RANDOLPH ET AL., PETITIONERS,

VS.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY ET AL., RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS.

BRIEF OF RESPONDENTS R. D. WOOD, ROY ELLIOTT LANG, JOHN WILLIAM DEARING AND HOLLIS ORVAL THOMPSON AND BROTHERHOOD OF RAILROAD TRAINMEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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INDEX

Jurisdiction 1

Petitioners' Summary Statement of Matter Involved and of Essential Facts 2

Statement of the Case 2

Pleadings 4

Chronological Order of Factual Events Leading to Suit 7

Further Evidentiary Facts 12

Present Status of the Brotherhood's Time Claim Against Carrier 15

Summary of Argument 16

Argument—

Point A. This case involves a labor dispute within the meaning of the Norris-LaGuardia Act, Title 29, U. S. C. A., Section 101 et seq. and, therefore, the judgment of the United States Circuit Court of Appeals remanding the cause to the district court with instructions to dissolve the temporary injunction is unquestionably correct. The Petitioners do not, either in the Petition or the supporting brief, challenge this ruling. The Petition should therefore be denied 20

Point B. Questions I, II and III in the Petition do not present any question arising on the record in this case because as shown by the pleadings and the evidence, the controversies between the Petitioners and the Carrier and between these respondents and the Carrier are under the applicable law as announced by this and other courts justiciable solely under the provisions of the Railway Labor Act and by the boards and tribunals provided for in the act 22

Point C. Question IV presented in the Petition does not arise on the record in this case. Whether one union goes to Division One of the Adjustment Board, whereas another union goes to Division Four of the Adjustment Board for a determination of their respective disputes with the Carrier is of no consequence. The Railway Labor Act affords a full, complete and adequate remedy for the disputants in each instance 28

Point D. Questions V and VI presented in the Petition do not arise on the record in this case because the facts pleaded and all the facts shown in evidence show that these respondents were not guilty of a common law tort 31

Point E. Question VII presented in the Petition does not arise on the record in this case for the reason that in this case there is absolutely no issue whatever as to racial discrimination of any kind or as to whether the porters, whose membership is negro, have or can have a fair hearing before either the Adjustment Board or the Mediation Board 33

Point F. Discussion of reasons VIII and IX of Petitioners' supporting brief 36

Conclusion 37

TABLE OF CASES

Alabama State Federation of Labor vs. McAdory, 325 U. S. 450, 463, 464, 65 S. Ct. 1384, 1390, 1391 ..... 19, 35

Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, vs. Toledo, P. & W. R. R., 321 U. S. 50, 64 S. Ct. 413, 414, 416, 417, 418, 420 ..... 16, 22

Brotherhood of Railroad Trainmen vs. Texas & P. Ry. Co., 159 F. 2d 822 (cert. den. 68 S. Ct. 62, rehearing den. 68 S. Ct. 149) 17, 23, 24, 25

Gaskill vs. Roth, 151 F. 2d 366 (cert. den. 327 U. S. 798, 66 S. Ct. 896, rehearing den. 328 U. S. 876, 66 S. Ct. 975) 17, 25, 26

Coffman vs. Breeze Corporations, 323 U. S. 316, 324, 325, 65 S. Ct. 298, 303 ..... 19, 35
Cole et al. vs. Atlanta Terminal et al., 16 F. Supp. 131, 133 ..... 16, 22
Cook vs. Des Moines Union Ry. Co., 16 F. Supp. 810, 814 ..... 19, 34
General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas R. R. vs. Missouri-Kansas-Texas R. Co., 320 U. S. 323, 64 S. Ct. 146 ..... 17, 23, 24
General Committee of Adjustment of Brotherhood of Locomotive Firemen and Engineers vs. Southern Pac. Co. et al., 320 U. S. 338, 64 S. Ct. 142 ..... 17, 23
Hill vs. Texas, 316 U. S. 400, 62 S. Ct. 1159 ..... 19, 35
Kansas City Southern Railway Co. vs. Cornish et al., 65 F. 2d 671 ..... 18, 31
Mellon Co. vs. Charles McCafferty, 239 U. S. 134, 36 S. Ct. 94, 95 ..... 18, 31
Moore vs. Illinois Central Railroad Co., 312 U. S. 630, 61 S. Ct. 754 ..... 17, 24, 25, 26
Myers vs. Bethlehem Ship Building Corporation, 303 U. S. 41, 50, 51, 52, 58 S. Ct. 459, 463, 464 ..... 18, 31
National Labor Relations Board vs. Karp Metal Products Co., Inc., 134 F. 2d 954, 955 ..... 18, 33
Order of Railway Conductors of America vs. Pitney et al., 326 U. S. 561, 66 S. Ct. 322 ..... 16, 17, 18, 21, 22, 23, 24, 25, 27, 28, 31
Order of Railroad Telegraphers vs. New Orleans, Texas and Mexico Ry. Co., 156 F. 2d 1, Cert. Den. 329 U. S. 758, 67 S. Ct. 112 ..... 16, 17, 21, 23, 25, 26
Orr vs. Mutual Benefit Health & Accident Association, 207 S. W. 2d 511, 515 ..... 19, 33
Patton vs. Mississippi, 68 S. Ct. 184 ..... 19, 35
Portland Hotel Corporation vs. Fidelity Storage Corporation, 132 F. 2d 57 ..... 19, 33
In re Prima Co., 98 F. 2d 952, 965 ..... 19, 33
Southern Ry. Co. vs. Order of Railway Conductors, 63 F. Supp. 306 ..... 18, 27

Steele vs. Louisville and N. R. Co., 323 U. S. 192, 65 S. Ct. 226 ..... 17, 19, 24, 35
Switchmen's Union of North America vs. National Mediation Board, 320 U. S. 297, 64 S. Ct. 95 ..... 17, 23, 24, 25
Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76 et al., 323 U. S. 210, 65 S. Ct. 235 ..... 17, 24
United States vs. Hutchison, 312 U. S. 219, 234, 61 S. Ct. 463, 467 ..... 16, 22
Washington Terminal Co. vs. Boswell, 124 F. 2d 235 ..... 18, 26

STATUTES CITED

Norris-LaGuardia Act, Title 29, U. S. C. A., Sec. 101, et seq. 7, 16, 20, 21
Railway Labor Act, Title 45, U. S. C. A., Sec. 151, et seq. 4, 7, 16, 18, 21, 28, 32
30 C. J. S., Sec. 26, p. 353 ..... 18, 31
17 C. J. S., Sec. 172, p. 532 ..... 18, 33
Restatement of Law of Torts, Section 773, page 87 ..... 18, 33

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JURISDICTION.

The Petition for Writ of Certiorari states that the jurisdiction of this court is invoked under Title 29, Section 344, Judicial Code as Amended, Section 237 (Petition p. 2).

Section 344 appears to relate to "Appellate jurisdiction of decrees of State courts; certiorari" Title 28, U. S. C. A., Sec. 344 (Judicial Code, Section 237 amended). The judgment, decision or decree complained of by Petitioners in this case has been rendered by the United States Circuit Court of Appeals for the Eighth Circuit (R. 695-705, 164 F. 2d 4). We therefore do not understand that this court has jurisdiction under the aforementioned Section 344.

PETITIONERS' SUMMARY STATEMENT OF MATTER INVOLVED AND OF ESSENTIAL FACTS.

For the most part the statement of matter involved and of essential facts in the Petition consists of a resume' of the findings of fact and declarations of law adopted by the District Court and is so replete with self-serving interpretive statements that we must insist that no fair statement of the matter involved is presented in the Petition. Therefore, in order to apprise this court of the nature of this case and the real issues inherent in the record we are compelled to make a complete statement of the case.

I.

STATEMENT OF THE CASE.

The controversy in this suit involves a dispute between the Petitioners (Porters) and these Respondents (Trainmen) regarding the right to do certain work on the lines of the Respondents Missouri-Kansas-Texas Railroad and Missouri-Kansas-Texas Railroad of Texas (Carrier).

The Services in Controversy (hereinafter referred to by that title) are:

(1) Inspection of cars and trains and the testing of signal and brake apparatus for safety of train movement.

(2) The use of hand and lamp signals for the protection and movement of trains and engines, including necessary flag protection on the head end of trains or through blocks.

(3) Opening and closing switches and derails for switching and for the movement of trains and engines enroute around wyes and at some terminals.

(4) Coupling and uncoupling cars and engines and the hose and chain attachments thereof enroute and at some passenger terminals.

(5) Pick up, set out, place and switch loaded and unoccupied passenger cars enroute and at some passenger terminals.

(6) Read the Conductor's train orders and familiarize himself with them to determine where opposing trains are to be met or passed and observe position of train order signals and see that train orders affecting the movement of trains are picked up enroute (Footnote to Opinion, R. 697, 698).

The Services in Controversy constitute a part of the duties of Passenger Train Brakemen and are and for a long period of years have been performed by Brakemen on the lines of the Carrier. Such duties are included in Brakemen's Services generally on all railroads in the country (R. 582-585).

The petitioners are Brotherhood of Sleeping Car Porters, Train, Chair Car, Coach Porters and Attendants, an International Unincorporated Labor Union affiliated with the American Federation of Labor, and Local Train Porters Union No. 3 and officers and members of said

unions. Petitioners claim to represent all of that class of persons on the Carrier known as Train Porters, who will hereafter be referred to as Porters. The International Union is the representative of the Porters as to their collective bargaining and other rights under the Railway Labor Act (Title 45, U. S. C. A., Secs. 151 *et seq.*, R. 1, 3, 467, 517, 518).

These respondents R. D. Wood, Roy Elliott Lang, John William Dearing, and Hollis Orval Thompson are officers and members of the respondent Brotherhood of Railroad Trainmen. The respondent Brotherhood of Railroad Trainmen, hereinafter sometimes referred to as Brotherhood, is an International Unincorporated Labor Union and represents the Trainmen class or craft including Brakemen with respect to their collective bargaining and other rights with the Carrier under the Railway Labor Act. The Trainmen class will sometimes be referred to herein as Trainmen or Brakemen (R. 3, 580).

The respondents Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas are the Carrier on whose lines the members of the Porter class and Trainmen class affected by this litigation are employed (R. 3).

Pleadings.

The Porters instituted this action in the United States District Court for the Western District, Western Division of Missouri, by a verified complaint supported by affidavits filed June 24, 1946 (R. 2-16). Upon the filing of the verified complaint and an *ex parte* hearing held without notice to any of the respondents the district judge issued a temporary restraining order (R. 16-18).

The complaint alleges this is a class action and among other things that the rights being claimed by the Porters

spring from a contract as well as long established and agreed custom between the Porters and the Carrier. The wrong charged against the Carrier is the threat by the Carrier to cancel the contract and custom between the Porters and Carrier (R. 3, 4, 5).

The wrong charged against the Brotherhood is an alleged unlawful and tortious interference and threat on its part to interfere with the claimed rights of the Porters under the alleged contract and custom with the Carrier by the exercise of fraud, duress, threats, and undue influence upon the Carrier with the intent to induce the Carrier to violate the alleged custom and alleged contract (R. 5).

The complaint alleges that among the duties of Porters on the Carrier lines are loading and unloading passengers, looking after their comfort, assisting with their luggage, and other duties not having directly to do with the movement of trains, and in addition thereto duties directly connected with the movement of trains, which duties are said to be the Services in Controversy (R. 5, 6).

The complaint alleges that the Porters have their own seniority rights which are not limited by the seniority rights of Trainmen, and that Porters have no rights as Trainmen either as to seniority or otherwise, because the Porters, being Negroes, are not permitted to belong to the Brotherhood (R. 6).

The complaint also alleges that the Carrier and the Train Porters entered into a written contract on December 3, 1928, fixing wages, working conditions, etc. (R. 8).

By way of amplification of the charge against the Brotherhood the complaint alleges that the fraud, duress, threats and undue influence of the Brotherhood against the Carrier consisted of (1) that unless the Carrier took from the Porters the performance of the Services in Controversy, the Brotherhood would make claims against it by various proceedings in and out of court and (2) that it

was impossible for the Carrier to comply with the Brotherhood's demands without breaching its contract and custom with the Porters and (3) if the threat of the Brotherhood was carried out many claims and suits would be filed which would be burdensome to the Carrier and hence place the Carrier in a dilemma as to whether it should abide by the contract and custom between it and the Porters or breach the same and comply with the demands of the Brotherhood, and (4) that said threats by the Brotherhood, both written and oral, culminated in a writing of April 1, 1946, expressly demanding that the work be taken from the Porters and given to the Brotherhood (R. 10, 11).

On June 7, 1946, the Carrier notified the Porters that because of the demands of the Brotherhood, the contract between the Carrier and the Porters would be cancelled, effective June 30, 1946 (R. 11, 12).

The complaint then avers that unless the Carrier is restrained it will carry out its threat to cancel the contract and custom and comply with the demands of the Brotherhood and unless the Brotherhood is restrained it will carry out its threats and continue to bring pressure on the Carrier (R. 12).

The Complaint alleges that the Porters have no administrative or statutory remedies to maintain the *status quo* of their jobs and that the Railway Labor Act and other administrative acts provide the Porters no remedies (R. 12).

The prayer of the complaint among other things originally sought a declaration of the rights of the parties, but this portion of the prayer was later stricken on motion of the Petitioners (R. 13, 74).

By way of further relief the prayer requests the court of equity to enjoin the Carrier from violating and cancelling the contract with the Porters and to enjoin the Broth-

erhood from seeking to enforce the demands of the Trainmen against the Carrier (R. 13, 14).

The temporary restraining order issued by the District Court followed the prayer of the complaint (R. 16, 17, 18).

On July 15, 1946, the Brotherhood filed a motion to dissolve or vacate the temporary restraining order on the grounds (1) that petitioners were not entitled to injunctive relief under the terms of the Norris-LaGuardia Act, Title 29, U. S. C. A., Sec. 108, and (2) that the court had no jurisdiction of the subject matter under the provisions of the Railway Labor Act, Title 45, U. S. C. A., Sec. 151, *et seq.* (R. 20, 21).

Also on July 15, 1946, the Brotherhood filed a motion to dismiss the complaint on the ground that the District Court had no jurisdiction of the subject matter and at the same time a similar motion to dismiss was filed on behalf of the individual respondents (R. 33, 34).

Subsequently, a motion to stay proceedings was substituted by the Brotherhood for the motion to dismiss the complaint (R. 69-71).

All motions were overruled by the District Court on November 30, 1946 (R. 74-76), and on January 20, 1947, these respondents filed their amended answer on which the issues were joined and in which all motions to dismiss and pleas to the jurisdiction of the court were renewed (R. 94-106).

Chronological Order of Factual Events Leading to Suit.

At various times between 1939 and 1946 the General Chairman of the Brotherhood of the Carrier Lines discussed the claim of the Brotherhood that Brakemen were entitled to perform the Services in Controversy with representatives of the Carrier (R. 593, 594) and in that con-

nection, the disputes and claims filed by the Brotherhood on the Southern Pacific Railroad (R. 592, 594) involving the same Services in Controversy. After the awards of the First Division of the National Railroad Adjustment Board in the Southern Pacific case, award No. 5906 (Exhibit X, R. 511) and No. 5907 (Exhibit Y, R. 503) which were later followed by an award on the Texas and Pacific Railroad, award No. 7251 (Exhibit Z, R. 505), the General Chairman of the Brotherhood discussed informally those awards with the Carrier's representative and said he would not file any formal protest against the Carrier until some definite disposition had been made of the cases on the Southern Pacific and the Texas and Pacific Railroad (R. 594). The disputes on the Southern Pacific were settled in January of 1946 and thereafter the General Chairman of the Brotherhood in the conversation which he had with the Carrier's representative called attention to the settlement and suggested that the Carrier and the Brotherhood try to work out some settlement similar to the settlement in the Southern Pacific case without the necessity of the Brotherhood filing time claims against the Carrier and taking them to the Adjustment Board (R. 594, 595). The Carrier's representative told the General Chairman that he would give consideration to the matter. Following this the General Chairman on February 27, 1947, wrote a letter to the Carrier's representative (Exhibit 23, R. 610) asking for a conference on the question of employees other than those holding seniority as Brakemen performing Brakemen's duties, *viz.*, Services in Controversy on passenger trains. He received no reply from the Carrier's representative in regard to the matter (R. 595). The General Chairman then wrote the letter of April 1, 1946, addressed to the Carrier's representative (Exhibit M, R. 239-241) formally protesting the performance of Brakemen's duties on passenger trains by employees other than

Brakemen and enumerated among such duties the Services in Controversy. The letter concludes:

> "Unless the practice of requiring or permitting these employees to perform Brakemen's duties is discontinued within ten days from date of this letter, claim will be filed for each available Brakeman on M-K-T Lines first out on extra board at time such train is run, on which this service is performed by other than a qualified Brakeman, on the same basis as though such Brakeman was used to perform all of the Brakemen's duties and work on such passenger trains" (R. 240, 241).

On April 12, 1946, the Carrier's representative wired the General Chairman (Exhibit 21, R. 609) inquiring if the Brotherhood would be willing to consolidate the seniority list of Brakemen with that of the Porters and on the same date the General Chairman replied by wire (Exhibit 22, R. 609) that the Brotherhood would not be willing to do so. On the same date the Carrier's representative wired the International Field Organizer of the Porters (Exhibit N, R. 241) asking whether the Porters would be willing to consolidate the seniority list of the Porters with that of the Brakemen, to which request he received a telephone reply that the Porters would not be willing to do so (R. 473).

The Carrier's representative then wrote a letter to the Porters' representative (Exhibit O, R. 242) dated April 15, 1946, formally notifying the Porters of the Carrier's intention to discontinue the performance of the Services in Controversy by Porters effective May 16, 1946, and to cancel the current collective bargaining contract between the Porters and the Carrier and to negotiate a new agreement. On the same date the Carrier's representative wrote the Brotherhood's representative (Exhibit 20, R. 607) replying to Exhibit M (R. 239-241) pointing out that it would be

necessary for the Carrier to cancel the existing agreement between the Porters and the Carrier and further that because the Brotherhood had refused to consolidate its seniority list with that of the Porters and because of decisions of the Adjustment Board on other railroads the Carrier was giving the required notice to the Porters of cancellation of the Porters' agreement effective May 16, and also advised that the time claims of the Trainmen referred to in Exhibit M (R. 239-241) were declined.

On April 17, 1946, the Porters, through their International representative wrote the Carrier's representative (Exhibit P, R. 243, 244) acknowledging receipt of the Carrier's notice of cancellation (Exhibit O, R. 242) and set the time and place for conference on the notice. On the same day the Brotherhood's representative wrote the Carrier (Exhibit 24, R. 611) acknowledging receipt of the Carrier's letter (Exhibit 20, R. 607) pointing out that the Brotherhood's letter of April 1, 1946 (Exhibit M, R. 239-241), is a protest against employees other than those referred to in Article 68 (Article 58) of the Trainmen's Agreement (R. 295) performing Trainmen's service on passenger trains and is a request for a proper application of current rules, and further advising that time claims submitted after April 10, 1946, on account of violations of the current agreement of the Brotherhood and the Carrier will be handled in the usual manner of appeals.

Pursuant to the Carrier's notice of cancellation to the Porters and the Porters' reply thereto (Exhibit O, R. 242) the first conference between the Porters and the Carrier was held on May 7, 1946. The Porters were represented by the International Field Organizer, the International President, the First International Vice-President of the Porters' Union, and the General Chairman of the Porters on the Carrier Lines. The Assistant General Manager (R. 532) of the Carrier and the Carrier's attorney appeared for

the Carrier (R. 475). A discussion was had concerning the reasons for the notice of cancellation. The Carrier's representative showed the Porters the Brotherhood's formal notice (Exhibit M, R. 239-241, R. 476) and told the Porters that just before this conference a situation had developed on the St. Louis and San Francisco lines in which there was a threatened strike by the Trainmen and one of the reasons for it was the performance by Train Porters of the Services in Controversy (R. 476, 477). He called attention to the economic strength of the Brotherhood and also to the decisions of the First Division of the National Railroad Adjustment Board involving disputes over similar work on the Santa Fe, Southern Pacific, and Texas and Pacific, and remarked that in view of these decisions it was felt almost certain that the same Board would decide the same way against the Carrier on the time claims filed by the Brotherhood (R. 477). There was discussion about taking the dispute between the Porters and the Carrier to the National Mediation Board (R. 479) and also about taking the matter to the National Railroad Adjustment Board (R. 480). The Carrier's representative summed up the situation by saying that even though the Carrier desired to continue employing the Porters it had no other way than to cancel the agreement, in view of the pressure being exercised by the Brotherhood (R. 477), and that the Carrier felt it necessary to negotiate a new agreement with the Porters which would exclude the Services in Controversy (R. 446, 447). The Porters asked the Carrier's representative to postpone the effective date of the notice to permit them time to employ a lawyer (R. 446, 447, 481). The conference terminated in the Carrier's representative's letter to the Porters dated May 7, 1946 (Exhibit R, R. 246), which referred to the conference and to the Carrier's notice of April 15 (Exhibit O, R. 242) and

advised that since no agreement had been reached the effective date of said notice was being postponed.

On May 13, 1946, the Carrier's representative wrote the Brotherhood's General Chairman (Exhibit 25, R. 612, 613) advising that the handling of the matter under the Railway Labor Act not having been completed, the effective date of the discontinuance of the performance of the Services in Controversy by the Porters had been postponed. In reply the General Chairman of the Brotherhood wrote (Exhibit 26, R. 613, 614) and reiterated the Brotherhood's position set forth in his letter of April 1 (Exhibit M, R. 239-241).

On May 22 another conference between the Porters and the Carrier was held which culminated in a letter from the Carrier to the Porters (Exhibit T, R. 248) noting that agreement had not been reached on the notice of cancellation of the contract and that a later conference was to be arranged. The last conference between the Porters and the Carrier was held June 7 (R. 475). The Porters' attorney attended and was their spokesman (R. 481, 482) and the whole matter was rediscussed and re-explored with emphasis on the legal phases (R. 482). This conference ended with a letter being written by the Carrier to the Porters (Exhibit V, R. 250, 251) notifying the Porters that cancellation of the contract (Exhibit I, R. 229) would be effective June 30, 1946.

Further Evidentiary Facts.

Although the representatives of the Porters in the conferences with the Carrier understood that the purpose of the Carrier was to cancel the current Porters' Agreement and negotiate another agreement in which the Services in Controversy would be excluded from the work to be performed by Porters (R. 487), neither the Petitioners' Union nor any of the Petitioner members of the Porter class took

any steps under the provisions of the Railway Labor Act to go to the National Mediation Board (R. 479, 480, 493) or to the National Railroad Adjustment Board (R. 480, 494), although the right to do so was recognized (R. 492, 493, 494).

Also in the discussion of the awards of the First Division of the National Railroad Adjustment Board (Exhibit Y, R. 502, 503; Exhibit Z, R. 504, 505; Exhibit W, R. 507, 509; Exhibit X, R. 510, 511) involving other railroads the Porters' representatives had knowledge of all of those awards and had them in mind at the time of the discussions (R. 514).

The Porters' representatives likewise knew that the Brakemen took their disputes to Division 1 of the Adjustment Board (R. 480) and that the Train Porters took their disputes to Division 4 of the Adjustment Board (R. 480, 520).

Exhibit H (R. 225) was the first collective bargaining contract between the Porters and the Carrier and was in force from July 1, 1921, until 1928 (R. 357). Exhibit I (R. 229) is the current contract and superseded Exhibit H and became effective December 1, 1928 (R. 364). Exhibit I has been amended several times, as shown by Exhibit J (R. 234), Exhibit K (R. 235), and Exhibit L (R. 237).

During Federal control of railroads in 1918 and 1919 when Train Porters performed the duties of Brakemen, such as inspecting cars, opening and closing switches, etc., Porters were paid the Brakemen's wage scale, which was higher than the Porter's scale (R. 359). After the termination of Federal administration of the railroads in 1921 the wages of Train Porters were reduced by bulletin (R. 426, 427).

There are 66 Porters on the Carrier (R. 414). Members of the Porter class have performed some of the Serv-

ices in Controversy for over 30 years (R. 313-379, R. 380-412, R. 413-454, R. 455-463).

The Mediation Board did not proffer its services in this controversy between the Porters and the Carrier (R. 544), and neither the Porters nor the Carrier requested the services of the Mediation Board under the provisions of the Railway Labor Act, and the Mediation Board had no knowledge of the pendency of the dispute regarding the Carrier's attempted cancellation of the Porters' contract (R. 560).

No Porter holds seniority as a Brakeman nor is any Porter paid under the Brakemen's Agreement (R. 355, 356, 485, 486, 553, 554). There was no agreement at any time between the Carrier and the Porters wherein the Carrier specifically agreed to assign to Porters the Services in Controversy (R. 562).

The duties of passenger train Brakemen on the Carrier include the Services in Controversy (R. 583, 584) and have been performed by Brakemen on the Carrier lines since 1911, and are included in Brakemen's services generally on all railroads in the country (R. 585).

The Trainmen, at least since 1918, have protested to the Carrier the performance of the Services in Controversy by employees of the Carrier other than Brakemen (R. 625-630, R. 590, 591, 592, 593).

The Brotherhood did not suggest or demand at any time that the Carrier cancel any existing agreement with the Porters (R. 604) nor did the Brotherhood either insist or desire that Porters be removed from any of the Carrier lines (R. 604). The Brotherhood did not insinuate the threat of a strike in the event the Carrier refused to accede to the Brotherhood's request that the Brakemen's services (Services in Controversy) be assigned to Brakemen (R. 615). The Brotherhood contemplated, and but for the restraining order would have

listed its time claims for a conference with the Carrier management and handled those claims with the Carrier in conferences and if the Carrier declined to pay the claims it would then have asked the Carrier to join in submitting the claims to the First Division of the National Railroad Adjustment Board and had the Carrier refused to so join it would have submitted the claims to the Board *ex parte* under the provisions of the Railway Labor Act and if not restrained it is still the intention of the Brotherhood to so advantage itself of the remedies provided by the terms of the Railway Labor Act (R. 615).

The Petitioners' suit herein was filed June 24, 1946, six days prior to June 30, 1946.

Present Status of the Brotherhood's Time Claims Against Carrier.

Since June 24, 1946, the Brotherhood and the Trainmen or Brakemen members of the class represented by it, have by virtue of the District Court's temporary restraining order (R. 16-18) and temporary injunction (R. 160-163) been restrained from pursuing their lawful remedies against the Carrier which are vouchsafed to them by Congress under the Railway Labor Act.

SUMMARY OF ARGUMENT.

POINT A.

This case involves a labor dispute within the meaning of the Norris-LaGuardia Act, Title 29, U. S. C. A., Section 101 et seq. and, therefore, the judgment of the United States Circuit Court of Appeals remanding the cause to the district court with instructions to dissolve the temporary injunction is unquestionably correct. The Petitioners do not, either in the Petition or the supporting brief, challenge this ruling. The Petition should therefore be denied.

Norris-LaGuardia Act, Title 29, U. S. C. A., Sec. 101, *et seq.*

Order of Railway Conductors of America v. *Pitney et al.*, 326 U. S. 561, 66 S. Ct. 322.

Order of Railroad Telegraphers v. *New Orleans, Texas and Mexico Ry. Co.*, 156 F. 2d 1, Cert. Den. 329 U. S. 758, 67 S. Ct. 112.

Railway Labor Act, Title 45, U. S. C. A., Sec. 151, *et seq.*

Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, v. *Toledo, P. & W. R. R.*, 321 U. S. 50, 64 S. Ct. 413, 414, 416, 417, 418, 420.

United States v. *Hutchison*, 312 U. S. 219, 234, 61 S. Ct. 463, 467.

Cole et al. v. *Atlanta Terminal et al.*, 16 F. Supp. 131, 133.

POINT B.

Questions I, II and III in the Petition do not present any question arising on the record in this case because as shown by the pleadings and the evidence, the controversies between the Petitioners and the Carrier and between these respondents and the carrier are under the applicable law as announced by this and other courts justiciable solely under the provisions of the Railway Labor Act and by the boards and tribunals provided for in the act.

Order of Railway Conductors of America v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322.

Switchmen's Union of North America v. *National Mediation Board*, 320 U. S. 297, 64 S. Ct. 95.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas R. R. v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 64 S. Ct. 146.

General Committee of Adjustment of Brotherhood of Locomotive Firemen and Engineers v. *Southern Pac. Co. et al.*, 320 U. S. 338, 64 S. Ct. 142.

Order of Railroad Telegraphers v. *New Orleans, Texas and Mexico Ry. Co. et al.*, 156 F. 2d 1 (cert. den. 329 U. S. 758, 67 S. Ct. 112).

Brotherhood of Railroad Trainmen v. *Texas & P. Ry. Co.*, 159 F. 2d 822 (cert. den. 68 S. Ct. 62, rehearing den. 68 S. Ct. 149).

Steele v. *Louisville and N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226.

Tunstall v. *Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76 et al.*, 323 U. S. 210, 65 S. Ct. 235.

Moore v. *Illinois Central Railroad Co.*, 312 U. S. 630, 61 S. Ct. 754.

Gaskill v. *Roth*, 151 F. 2d 366 (cert. den. 327 U. S. 798, 66 S. Ct. 896, rehearing den. 328 U. S. 876, 66 S. Ct. 975).

Washington Terminal Co. v. *Boswell*, 124 F. 2d 235.

Southern Ry. Co. v. *Order of Railway Conductors*, 63 F. Supp. 306.

POINT C.

Question IV presented in the petition does not arise on the record in this case. Whether one union goes to Division One of the Adjustment Board, whereas another union goes to Division Four of the Adjustment Board for a determination of their respective disputes with the carrier is of no consequence. The Railway Labor Act affords a full, complete and adequate remedy for the disputants in each instance.

Railway Labor Act, Title 45, U. S. C. A. 151 *et seq.*

Order of Railway Conductors of America v. *Pitney*, *supra*, 326 U. S. 561, 567, 66 S. Ct. 322, 325.

Mellon Co. v. *Charles McCafferty*, 239 U. S. 134, 36 S. Ct. 94, 95.

Myers v. *Bethlehem Ship Building Corporation*, 303 U. S. 41, 50, 51, 52, 58 S. Ct. 459, 463, 464.

Kansas City Southern Railway Co. v. *Cornish et al.*, 65 F. 2d 671.

30 C. J. S., Sec. 26, p. 353.

POINT D.

Questions V and VI presented in the Petition do not arise on the record in this case because the facts pleaded and all the facts shown in evidence show that these respondents were not guilty of a common law tort.

17 C. J. S., Sec. 172, p. 532.

Restatement of Law of Torts, Section 773, page 87.

National Labor Relations Board v. *Karp Metal Products Co., Inc.*, 134 F. 2d 954, 955.

Portland Hotel Corporation v. *Fidelity Storage Corporation*, 132 F. 2d 57.

In re Prima Co., 98 F. 2d 952, 965.

Orr v. *Mutual Benefit Health & Accident Association*, 207 S. W. 2d 511, 515.

POINT E.

Question VII presented in the Petition does not arise on the record in this case for the reason that in this case there is absolutely no issue whatever as to racial discrimination of any kind or as to whether the porters, whose membership is negro, have or can have a fair hearing before either the Adjustment Board or the Mediation Board.

Cook v. *Des Moines Union Ry. Co.*, 16 F. Supp. 810, 814.

Hill v. *Texas*, 316 U. S. 400, 62 S. Ct. 1159.

Patton v. *Mississippi*, 68 S. Ct. 184.

Steele v. *Louisville and N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226.

Alabama State Federation of Labor v. *McAdory*, 325 U. S. 450, 463, 464, 65 S. Ct. 1384, 1390, 1391.

Coffman v. *Breeze Corporations*, 323 U. S. 316, 324, 325, 65 S. Ct. 298, 303.

POINT F.

Discussion of reasons VIII and IX of Petitioners' supporting brief.

ARGUMENT.

POINT A.

This case involves a labor dispute within the meaning of the Norris-LaGuardia Act, Title 29, U. S. C. A., Section 101 et seq. and, therefore, the judgment of the United States Circuit Court of Appeals remanding the cause to the district court with instructions to dissolve the temporary injunction is unquestionably correct. The Petitioners do not, either in the Petition or the supporting brief, challenge this ruling. The Petition should therefore be denied.

The facts pleaded (Complaint, R. 2-14, Amended Answer, R. 94-106), as well as all of the facts shown in evidence, present a labor dispute within the meaning of the Norris-LaGuardia Act, Title 29, U. S. C. A., Sec. 101 *et seq.*, and particularly Section 108 and Section 113 (a) and (c), thereof. In this case the Brotherhood's claim of exclusive right to perform the Services in Controversy is predicated upon its contracts with Carrier, as well as long established custom which this record discloses have been in continuous existence at least from the first collective bargaining agreement with the Carrier (Stipulation of Facts, R. 653) up to the current agreement effective November 1, 1929 (Exhibit G, R. 252-312). These contracts govern the wages, hours and working conditions of Conductors and Brakemen on the Carrier lines. The several services covered by Exhibit G were all Trainmen services. The Trainmen class includes Brakemen. This classification in the various services is carried throughout the contract. Among other provisions of the contract pertinent to the Brotherhood's claim are the following: Article 1 (R. 255); Article 42 (d) (R.

287); Article 45 (a), (b), (c) and (h) (R. 289-290); and Article 58 (R. 295). The Services in Controversy constitute a portion of the duties of Brakemen not only on the Carrier but on railroads generally throughout the country (R. 585). Thus, the dispute between the Brotherhood and the Carrier necessarily involves an interpretation and application of the Brotherhood's agreement. The Porters' claim of right to the performance of the Services in Controversy likewise arises out of their interpretation of their contract and alleged custom with the Carrier.

Since the claim of the Porters against the Carrier and the separate and independent claim of the Brotherhood against the Carrier to the right to perform the Services in Controversy encompass the same sphere of railroad employee activity, there exists a jurisdictional labor dispute between the Porters and the Brotherhood within the purview of the Railway Labor Act.

The disputes thus presented are to be determined only by the processes set up under the Railway Labor Act and are not justiciable in the federal courts. *Order of Railway Conductors of America* v. *Pitney et al.*, 326 U. S. 561, 66 S. Ct. 322; *Order of Railroad Telegraphers* v. *New Orleans, Texas and Mexico Ry. Co.*, 156 F. 2d 1, Cert. Den. 329 U. S. 758, 67 S. Ct. 112.

The dispute between the Porters and the Carrier as to the Carrier's right to cancel the Porters' contract and to negotiate a new contract was within the sole jurisdiction of the Mediation Board. Title 45, U. S. C. A., Sec. 152, Seventh, Sec. 156. Positive failure of the Porters with respect to their dispute with the Carrier to comply with the obligation imposed upon them by Section 152, First, of the Railway Labor Act is a clear violation of Section 108 of the Norris-LaGuardia Act which made it mandatory upon the Porters to exhaust every reasonable effort to settle and dispose of their disputes either by negotiation

or with the aid of any available governmental machinery of mediation or voluntary arbitration as a condition precedent to the right of injunctive relief. *Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27,* v. *Toledo, P. & W. R. R.*, 321 U. S. 50, 64 S. Ct. 413, 414, 416, 417, 418, 420; *United States* v. *Hutchison*, 312 U. S. 219, 234, 61 S. Ct. 463, 467; *Cole et al.* v. *Atlanta Terminal et al.*, 16 F. Supp. 131, 133.

Therefore, independent of all other phases of this case, the ruling of the Circuit Court of Appeals (R. 698, 699) on this question and its judgment based thereon are undeniably correct and are amply supported by the record in the case and the applicable principles of law announced in the foregoing cited authorities. The ruling is unchallenged and the petition should be denied.

POINT B.

Questions I, II, and III in the Petition do not present any question arising on the record in this case because as shown by the pleadings and the evidence the controversies between the Petitioners and the Carrier and between these respondents and the Carrier are under the applicable law as announced by this and other courts justiciable solely under the provisions of the Railway Labor Act and by the boards and tribunals provided for in the act.

Under Point A we have pointed out the nature of the disputes between the Porters and the Carrier and between the Brotherhood and the Carrier which constitute the subject matter here involved. The Brotherhood's contention that the District Court had no jurisdiction over the subject matter in this case is squarely upheld by the controlling and applicable decisions of this court in the following cases: *Order of Railway Conductors of Amer-*

ica v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322; *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297, 64 S. Ct. 95; *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas R. R.* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 64 S. Ct. 146; *General Committee of Adjustment of Brotherhood of Locomotive Firemen and Engineers* v. *Southern Pac. Co. et al.*, 320 U. S. 338, 64 S. Ct. 142. To the same effect is the ruling of the Eighth Circuit Court of Appeals in *Order of Railroad Telegraphers* v. *New Orleans, Texas and Mexico Ry. Co. et al.*, 156 F. 2d 1, cert. den., 329 U. S. 758, 67 S. Ct. 112, and of the Fifth Circuit in *Brotherhood of Railroad Trainmen* v. *Texas & P. Ry. Co.*, 159 F. 2d 822, cert. den., 68 S. Ct. 62, rehearing den., 68 S. Ct. 149. Therefore, in ruling that the issuance of the temporary injunction by the District Court was erroneous, in view of the Railway Labor Act as well as in view of the Norris-LaGuardia Act and in applying the applicable principles announced by this court in the *Pitney Case, supra*, and in the other cases cited above, the Eighth Circuit Court of Appeals ruled correctly and its judgment in so far as it is based on such ruling cannot be successfully attacked.

Petitioners under "Reasons Relied Upon" in the petition, and particularly Reasons V, VI and VII, say that the decision of the Eighth Circuit Court of Appeals is in conflict with the decisions of this court and of other courts of appeals and certain state courts noted thereunder. As near as we can discern from reading their brief, the Petitioners undertake to discuss this matter of conflict under Points 5 and 6 thereof. No where in their discussion of the subject do the Petitioners demonstrate any such alleged conflict. This court has established the general rule applicable to this case in its decisions in the *Pitney Case*, the *Switchmen's Union Case* and the *General Com-*

mittee Cases. The *Steele Case,* 323 U. S. 192, 65 S. Ct. 226 and the *Tunstall Case,* 323 U. S. 210, 65 S. Ct. 235, referred to in Reason V of the Petition and in Point 5 of the brief are cases involving factual situations which are completely different from the factual situation presented on the record in the case at bar. These cases deal with and decide only issues involving a very narrow exception to the general rule announced and applied by this Court in the *Pitney Case,* the *Switchmen's Union Case* and the *General Committee Cases.* A very clear distinction between the class of cases to which the case at bar belongs and the class of cases to which the decisions of the *Steele* and *Tunstall Cases* may be applicable is set forth in the Fifth Circuit Court of Appeals' opinion in *Brotherhood of Railroad Trainmen* v. *Texas & P. Ry. Co.,* 159 F. 2d 822, 826, and in which case this Court denied certiorari and denied rehearing.

It takes but a cursory reading of this court's opinion in *Moore* v. *Illinois Central Railroad Co.,* 312 U. S. 630, 61 S. Ct. 754, to demonstrate that there is no conflict between the decision of the Circuit Court of Appeals in the case at bar and this Court's decision in that case. The cases present two entirely different situations. In the *Moore case* the action was at law for damages claimed to have been sustained as the result of an alleged wrongful discharge of the employee involved. The action in this case seeks equitable relief at the hands of the equity court. So far as might be pertinent to any discussion here, the only question present in the *Moore Case* and on which this Court passed was whether there was an election of remedies available to the employee prior to a time that he may have availed himself of the procedures accorded him under the Railway Labor Act and set the machinery of that Act in motion. There was no question raised or passed upon by this Court in the *Moore Case* involving

the adequacy of any remedy that the employee had in that case. The claim of the Porters in the case at bar is predicated upon the asserted inadequacy of the remedies available to them under the Railway Labor Act. The question, if any, which this claim presents in this case has no relation whatever to the question of election of remedies such as was presented in the *Moore case*. The questions presented on the record in this case so far as the Petitioners' claim of inadequacy of remedy is concerned, come squarely within the purview of and are ruled by the decisions of this Court in the *Pitney Case*, the *Switchmen's Union Case* and the *General Committee Cases*, as well as by the decision of the Eighth Circuit Court of Appeals in the *Order of Railroad Telegraphers Case* and of the Fifth Circuit in the *Texas & P. Ry. Co. Case*.

Although Petitioners do not point out wherein the decision of the Eighth Circuit Court of Appeals in the case at bar (R. 695-705, 164 F. 2d 4) is in conflict with the same court's decision in *Gaskill* v. *Roth*, 151 F. 2d 366, cert. den. 327 U. S. 798, 66 S. Ct. 896, rehearing den. 328 U. S. 876, 66 S. Ct. 975, we cannot from a reading of the *Gaskill Case* comprehend any possible basis for the Petitioners' claim of conflict. The *Gaskill Case* was an action by certain conductors and brakemen against a carrier and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen in which the plaintiff conductors and brakemen sought to have the court declare that the carrier had prejudiced the existing collective bargaining agreement with respect to not assigning to them certain interdivisional work on the carrier lines, which work plaintiffs claim was accorded them by the contract, and to have an accounting for the moneys that should have been paid them for such work had the work been assigned as claimed.

No question of adequacy of remedy was before the Eighth Circuit Court of Appeals in the *Gaskill Case* for decision. Furthermore, the Eighth Circuit in its opinion very carefully distinguished between its judicial power to pass on the subject matter of an alleged breach of a collective bargaining contract and its lack of power to interfere with such matters properly within the sphere of collective bargaining negotiations. The situation and the issues before the court in the *Gaskill Case* and the situation and issues presented in this case are utterly dissimilar. Also, this Court will note that the purported claim of conflict with the decision in the *Gaskill Case* is not a claim of conflict with a decision of another Circuit Court of Appeals. The Eighth Circuit decided both the *Gaskill Case* and this case. It is, therefore, strange that if Petitioners had any complaint about the decision of the Eighth Circuit in the case at bar that was founded on any ruling of the Eighth Circuit in the *Gaskill Case* they did not call such complaint to the attention of the Court in their petition for rehearing filed in this case (R. 709-714). If on any theory at all it can be argued that the decision in this case is in conflict with the decision in the *Gaskill Case,* then to that extent the *Gaskill Case* has been overruled by the controlling decisions of this court in the *Pitney* and other cases cited by these respondents, *supra,* and by the Eighth Circuit's own later decisions in the *Order of Railroad Telegraphers Case* and in this case.

What we have said with respect to the Petitioners' purported claim of conflict between the Eighth Circuit's decision in this case and the decision of this Court in *Moore* v. *Illinois Central R. Co.,* 312 U. S. 630, 61 S. Ct. 754, likewise completely disposes of Petitioners' similar contention with respect to the decision of the United States Court of Appeals for the District of Columbia in *Washington Terminal Co.* v. *Boswell,* 124 F. 2d 235.

The decision in *Southern Ry. Co.* v. *Order of Railway Conductors*, 63 F. Supp. 306, adverted to under paragraph VI of the "Reasons Relied Upon" in the Petition, and likewise discussed in the supporting brief under Point VI, is not a decision by any Circuit Court of Appeals. It is a decision by the District Court for the Eastern District of South Carolina, Charleston Division. We do not understand that alleged conflict with such a decision affords any ground for the issuance of this Court's writ of certiorari. However, we will note here that the decision of the District Court in the *Southern Ry. Co. Case* was rendered on a motion to remand the case to the state court from which it had been removed. The action itself was one for a declaratory judgment to construe a contract of employment between the Railway Company and the railway conductors. So far as the opinion of the District Court in the *Southern Ry. Co. Case* discusses the abstract proposition of election of remedies, the discussion follows the reasoning of this Court's opinion in the *Moore Case*. In view of this Court's decision in the *Pitney Case* and other cases cited, *supra*, the *Southern Ry. Co. Case* is not authority for any proposition here. This Court in its decision in the *Pitney Case*, 326 U. S. 561, 566, 567, 66 S. Ct. 322, 325, pointed out:

> "* * * interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of the words and their position. * * *"

We do not undertake to discuss the Petitioners' purported claim of conflict with respect to the New York and Georgia decisions referred to in the supporting brief and under VII of the "Reasons Relied Upon" in the Petition for the reason that we do not understand any such conflict, even if it existed, is a ground calling for the issuance of

this Court's writ in the character of case which we are dealing with at bar.

Petitioners under Point VIII of the supporting brief involve themselves in a contradiction. They have complained of the Eighth Circuit Court of Appeals following and applying this Court's decision in the *Pitney Case*, but they now say that the *Pitney Case* is not in conflict with the decision of that Court in this case. Petitioners go further and state that the *Pitney Case* supports the judgment of the District Court. There seems to us to be only one explanation for that statement—either Petitioners are unwilling to recognize the true issues presented on the record in this case, or they have not read the *Pitney Case* with any understanding as to its meaning. The *Pitney Case* squarely supports the decision of the Eighth Circuit and conclusively determines that the District Court erred in issuing the temporary injunction.

POINT C.

Question IV presented in the Petition does not arise on the record in this case. Whether one union goes to Division One of the Adjustment Board, whereas another union goes to Division Four of the Adjustment Board for a determination of their respective disputes with the Carrier is of no consequence. The Railway Labor Act affords a full, complete and adequate remedy for the disputants in each instance.

The answer to Question IV is found in the Railway Labor Act itself. By Section 153, First, of the Act, Congress has taken great pains to afford all employees covered by the Act a full and complete hearing of all of their disputes with their carrier employers coming within the jurisdictional limitations of the Four Divisions of the Board. Congress has likewise set up very elaborate machinery to

insure an impartial selection of the members on these boards, the method for the handling of disputes and for deciding the same and issuing final and binding awards thereon. Congress has further provided that as to awards favorable to any employee or employee group, those awards, upon the Carrier's failure to comply with the orders of the Board, may be enforced against the Carrier in the federal courts. The remedies thus afforded are complete and adequate. The fact that the Brotherhood in this case is relegated to the First Division of the Adjustment Board, because its disputes with the Carrier come within the jurisdiction of that Division, and that the Porters with respect to their disputes are relegated to the Fourth Division for the same reason and that, therefore, their separate disputes with the Carrier will receive independent treatment is of no consequence. Congress by Section 153, First (h), divided the Adjustment Board into four divisions whose proceedings shall be independent of one another. This element of independence has no bearing upon the power of any division. Each is empowered to decide disputes coming within its defined jurisdictional limitations, and each is empowered to enter awards on such disputes, which are final and binding and all awards favorable to employees or employee groups, whether rendered by the First Division, the Fourth Division or any other Division of the Adjustment Board, are enforceable against the Carrier in the federal courts.

Under Point VIII of the supporting brief Petitioners claim that resort to the Mediation Board with reference to the Carrier's proposal to terminate the existing contract is likewise an inadequate remedy. There can be no merit to this contention. The Petitioners' dispute with the Carrier in this connection falls squarely within the jurisdiction of the Mediation Board, Section 155, First (a) and (b).

The Mediation Board has been specially designed by Congress to bring about the amicable settlement of disputes. Section 152, First, makes it mandatory upon the Petitioners, as well as the Carrier, to exert every reasonable effort to make and maintain their agreements concerning rates of pay, rules and working conditions and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of such disputes.

In their brief Petitioners state the Mediation Board is powerless in their situation, at least against the objection of the Trainmen. No basis for that statement can be found in the record or in the Railway Labor Act. The Trainmen have nothing to do with the Petitioners' dispute with the Carrier arising out of the Carrier's proposed cancelation of Petitioners' contract and there is nothing in the Railway Labor Act which either gives the Trainmen any right or permission to intervene in negotiations between the Petitioners and the Carrier before the Mediation Board or to object to the same.

Also under Point VIII Petitioners make the blanket assertion that there is no dispute between the Porters and the Carrier as to the interpretation or application of their contract. That statement is not supported by either the facts pleaded or the facts shown in evidence. The Porters claim a contractual right to perform the Services in Controversy. The Carrier's answer (R. 21-23, 25) and the facts shown in evidence deny the existence of any such contractual right (R. 562).

Petitioners also speak of the Adjustment Board having no jurisdiction of disputes between one group of employees and another group of employees. So far as the application of the Railway Labor Act is concerned, that issue does not arise on this record. The disputes which

the Porters have arising out of the claimed interpretation and application of their contract and the Carrier's proposed cancelation of the contract are between the Porters and the Carrier. As to any interest of the Brotherhood therein, such disputes are as though they were nonexistent. There is nothing whatever in this record to show what the results would have been had the Porters availed themselves of their remedies before the Adjustment Board and before the Mediation Board. Neither is there anything to show that those remedies were in the slightest degree inadequate. The Porters cannot claim inadequacy of the remedy because they did not avail themselves of the remedy. This Court has held that until the procedures afforded by the Railway Labor Act have been complied with and the agencies created by that Act have acted, the parties in the position of the Porters cannot show "irreparable loss and inadequacy of the legal remedy," *Pitney Case, supra,* 326 U. S. 561, 567, 66 S. Ct. 322, 325. See also *Mellon Co.* v. *Charles McCafferty,* 239 U. S. 134, 36 S. Ct. 94, 95; *Myers* v. *Bethlehem Ship Building Corporation,* 303 U. S. 41, 50, 51, 52, 58 S. Ct. 459, 463, 464, and to the same effect, *Kansas City Southern Railway Co.* v. *Cornish et al.,* 65 F. 2d 671; 30 C. J. S., Sec. 26, p. 353.

POINT D.

Questions V and VI presented in the Petition do not arise on the record in this case because the facts pleaded and all the facts shown in evidence show that these respondents were not guilty of a common law tort.

These questions appear to be discussed under Points IX and X of the Petitioners' supporting brief. The complete answer to Questions V and VI is that the Petitioners did not under the pleadings and the facts shown in evi-

dence make a case of common law tort against these respondents. On the record in this case these respondents have, and have had for a long period of time, a dispute with the Carrier involving an interpretation and application of their contract. These respondents have claimed and are claiming by their contract, as well as long established custom, the exclusive right to perform the Services in Controversy. That dispute is solely between these respondents and the Carrier. These respondents have the lawful right to assert and prosecute these claims against the Carrier to a decision by lawful means and to that end the Congress accorded to them and all others similarly situated the legal remedies created by the Railway Labor Act. The course which these respondents have adopted in an effort to enforce these claims against the Carrier is strictly within the purview of the Railway Labor Act. Cutting away all fallacies in arguments to the contrary, the course of action which the Brotherhood has pursued in this case had nothing whatever to do with Carrier's announced intention to cancel the Porters' contract. The Brotherhood at no time requested the Carrier to so conduct itself with the Porters, nor did it at any time either directly or indirectly express any desire that the Carrier should cancel that contract. It is obvious from the record in this case the Carrier's conduct with respect to the Porters was nothing more than the exercise of its own independent business judgment unaffected by anything the Brotherhood has done or intends to do with respect to processing the time claims against the Carrier to the Adjustment Board and was in pursuit of the right which the Carrier has under the Railway Labor Act, Section 152, Seventh, Section 156; but even assuming for the sake of argument that the Carrier was influenced by the Brotherhood's announced intention to process these time claims, nevertheless under all the applicable authorities

the Brotherhood had the lawful right to pursue the lawful course which it has pursued and no right of action either at law or in equity arises against it and in favor of the Porters. 17 C. J. S., Sec. 172, p. 532; Restatement of Law of Torts, Section 773, page 87; *National Labor Relations Board* v. *Karp Metal Products Co., Inc.*, 134 F. 2d 954, 955; *Portland Hotel Corporation* v. *Fidelity Storage Corporation*, 132 F. 2d 57; *In re Prima Co.*, 98 F. 2d 952, 965; *Orr* v. *Mutual Benefit Health & Accident Association*, 207 S. W. 2d 511, 515.

POINT E.

Question VII presented in the Petition does not arise on the record in this case for the reason that in this case there is absolutely no issue whatever as to racial discrimination of any kind or as to whether the porters, whose membership is negro, have or can have a fair hearing before either the Adjustment Board or the Mediation Board.

By stretching their imagination far beyond any facts shown in the record in this case and by indulging in wholly unwarranted and unsupported presumptions, the Petitioners have made a most strenuous attempt to challenge the attention of this Court to this case by the specious device of contending that the Porters, because they are Negroes, cannot have a fair and impartial hearing before the Adjustment Board for the reason that the labor representatives or members of the Board are prejudiced against Negroes performing any work in connection with transportation or movement of trains. Any well founded assertion in that regard would be serious, but to so contend on the record in this case is nothing short of contending a rank absurdity.

The Porters have submitted nothing to the Adjustment Board for hearing and decision. The Porters have ignored their remedies before the Mediation Board. There is no evidence in the record of this case as to the identity of all labor organizations having representation in the selection of the labor members of the Adjustment Board or any particular division thereof. There is no evidence that the Porters are not themselves so represented. There is no evidence that any of the three individual labor members of the Fourth Division to which the Porters take their disputes have any prejudice or bias against Porters because they are Negroes. For that matter there is no single bit of evidence in this record that any member of the Fourth Division, the First Division or any other division of the Board, whether such member be a management representative or a labor representative, is in any way prejudiced or biased either for or against any party to this suit, the Porters included. There is no evidence that any of the three members of the Mediation Board (who incidentally are appointed by the President) have any bias or prejudice against the Porters.

Without having submitted anything whatever for negotiation, trial, hearing, decision, mediation or arbitration under the procedures provided by the Railway Labor Act and without any evidence whatever of any bias of prejudice on the part of any member of any board or tribunal empowered to administer those procedures, how can the Porters contend that they have been or will be deprived of their right to a fair and impartial hearing. *Cook* v. *Des Moines Union Ry. Co.*, 16 F. Supp. 810, 814.

It is utterly beside the point in this case that the respondent Brotherhood of Railroad Trainmen has for a great many years by its constitution and bylaws excluded Negroes from membership in its fraternal organization. This, of course, does not mean that the Brotherhood does

not represent Negroes who may be members of the railroad crafts for which it is the authorized collective bargaining representative. This becomes all the more beside the point in this case when we realize that the Porters belong to a railroad craft entirely separate and distinct from any craft that is represented by the Brotherhood and in connection with their collective bargaining rights and other rights under the Railway Labor Act are represented by their own international labor union, the Petitioner, the Brotherhood of Sleeping Car Porters, etc.

To support this fictional theory, the Petitioners under Point IV of their supporting brief direct attention to the following cases: *Hill* v. *Texas*, 316 U. S. 400, 62 S. Ct. 1159; *Patton* v. *Mississippi*, 68 S. Ct. 184; and *Steele* v. *Louisville and N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226. There is no similarity whatever between those cases and the case at bar. The *Hill and Patton Cases* involve a denial by the states of Texas and Mississippi of the constitutional right of the petitioners therein under the Fourteenth Amendment to the Constitution of the United States to equal protection of the laws. No such question arises on the record in this case and no such question has been raised or preserved by the pleadings or at any other stage of the proceedings had in this case either in the District Court or the Eighth Circuit Court of Appeals. Furthermore, until the Petitioners have shown by evidence that they have been adversely injured by some real violation of a constitutional right, they cannot raise any such constitutional question and until such showing is made we do not understand that this Court will exercise its power to rule thereon. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 463, 464, 65 S. Ct. 1384, 1390, 1391; *Coffman* v. *Breeze Corporations*, 323 U. S. 316, 324, 325, 65 S. Ct. 298, 303.

The *Steele Case* involves a situation wherein a labor union in its collective bargaining negotiations with the carrier discriminated against the Negro members of the craft which it was representing solely on racial grounds, when it was the union's legal obligation to represent the very people it was discriminating against to the same extent it was obligated to represent the other members of the craft in question. No such question arises on the record in this case.

Petitioners have attached to their supporting brief and under Point VI thereof have referred to appendices A and B, the same being the district court's opinion in the *Hunter et al.* v. *Atchison, Topeka & Santa Fe Ry. Co. Case* and the court's findings of fact, conclusions of law and order for temporary injunction in that case. While we understand that opinion is not properly a part of the supporting brief, still we note that the questions presented in the *Hunter Case* are wholly dissimilar to the questions on the record in the case at bar. Apparently the only reason the Petitioners had for attaching the opinion as an appendix was for the questionable satisfaction they may have derived from the district court's statement to the effect that perhaps the National Railroad Adjustment Board is a prejudiced tribunal when Negro and white employees are involved. The *Hunter* opinion does not hold that the Board is so prejudiced and for all that might appear from the reading of the opinion and the court's findings of fact and conclusions of law, the statement seems to be gratuitous.

POINT F.

Reasons VIII and IX of the "Reasons Relied Upon" as set out in the Petition do not appear to be related to any of the questions numbered I to VII, inclusive, presented in the Petition, nor do we find anywhere in the

supporting brief where these reasons are discussed or their applicability to this case pointed out or any authority cited in support thereof. They are obviously reasons which the record in this case wholly fails to support, and in so far as they may be said to be material in any respect we feel that we have adequately disposed of them by the preceding argument and authorities cited in support thereof.

CONCLUSION.

When the pleadings and the record in this case are analyzed, it is perfectly obvious that what the Porters are seeking to do is to invoke the injunctive power of the federal courts for the sole purpose of forever eliminating all legal remedies available to these respondents by which they can legally enforce their lawful claims against the Carrier. To permit this to be accomplished by temporary injunction or otherwise is in itself to deny to these respondents due process and the equal protection of the laws which is guaranteed to them and all other citizens by the Constitution of the United States. Unless the judgment of the Circuit Court of Appeals is permitted to stand, the denial of these rights which has been in effect since June 24, 1946, will become a continuing actuality. The judgment of the Eighth Circuit Court of Appeals in this case is unquestionably correct and for all of the reasons above cited and the authorities cited in support thereof, these respondents respectfully submit that the

Petition for Writ of Certiorari in this case should be denied.

Respectfully submitted,

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